

# Workers' Comp & Safety News



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Claims Management

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## How to Keep Attorneys Out of Your Workers' Comp Claims

The Yellow Pages for New York City lists 45 law firms in its section on workers' compensation attorneys. Even tiny Medford, Oregon (population 75,000) boasts five workers' compensation law firms. It takes a lot of employers to keep all those lawyers busy—here's how to ensure that your business isn't one of them.



**W**hen the workers' compensation system works properly, an injured worker immediately reports his/her injury to the employer, gets treatment and files a claim with the employer's workers' compensation insurer or administrator. The insurer or administrator (in the case of a self-funded employer) then promptly pays the employee for all medical costs and any lost time.

However, disputes can arise when 1) the employee doesn't understand the workers' compensation process, 2) the employee

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## This Just In

**T**wo recent studies, by pharmacy benefit managers Express Scripts, Inc. and Progressive Medical, took a closer look at prescription drug use in workers' compensation and found:

- ✳ Prescription drug costs rose 5.8 percent in 2011.
- ✳ Employers could save more than \$2.1 billion in workers' compensation costs if doctors prescribed lower-cost generics instead of brand-name drugs.
- ✳ The use of compounded medications has increased since 2008.
- ✳ Narcotic painkillers (such as OxyContin and oxycodone) might be overprescribed. They accounted for 35-40

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and employer don't agree whether the injury is work-related or primarily work-related (more likely to occur in back injuries or repetitive stress injuries), or 3) the employee suffers a serious injury and permanent disability. In those cases, the employer and employee may disagree on how much compensation the employee is owed for his/her disability. Any of these situations could prompt an employee to want legal representation.

The Workers Compensation Research Institute (WCRI) recently released a study on attorney involvement in comp claims. It found employees are more likely to hire an attorney to represent them in a workers' compensation case in these circumstances:

- 1 The employee feels threatened.
- 2 The employee fears being fired.
- 3 The employee's supervisor doesn't believe the claim is valid.
- 4 The employee fears his/her claim will be denied. Reasons for this include receipt of a denial notice, a delay in payments or communications with the claims manager.
- 5 The employee has a serious (permanently disabling) injury.

Employers and claims managers can take steps to mitigate the first four situations. However, the WCRI study found that serious injuries had a "high correlation" with attorney involvement. Bogdan Savych, an analyst at WCRI, said actions by employers or claims staff would likely have little effect on reducing attorney involvement in these cases.

The WCRI study found other factors also

increased the likelihood of attorney involvement in workers' compensation claims. These include:

- ✦ Education level. People with a high school-only education versus college graduates.
- ✦ Language. Workers who chose to be interviewed in Spanish.
- ✦ Tenure. Workers who'd been on the job a year or less.
- ✦ Injury type. Individuals with low back conditions
- ✦ Age. Older workers versus younger ones.

### Why Try to Minimize Attorney Involvement?

Attorney involvement in a workers' compensation claim decreases your chances of early return to work. After all, an attorney has no interest in getting your employee back on the job. Attorney involvement will almost always increase the time it takes to settle a claim and may increase your costs, since you will need your own representation.

Employees don't always win when hiring an attorney, either. Most workers' compensation attorneys work on a contingency basis, taking a percentage of any payments or settlement your employee receives.

The following steps can help you reduce the likelihood of workers' compensation claims disputes:

- 1 Educate your employees about workers' compensation. Knowing how the system

percent of workers' comp drug spending among Progressive Medical's clients. That company helped its clients reduce spending on narcotics by 3.9 percent in 2011, while Express Scripts clients reduced utilization of narcotics by 4.2 percent in 2011. (Source: *Business Insurance*, April 22, 2012)

Prescription drug costs represent nearly one-fifth of all workers' compensation medical expenses, according to the NCCI. In the Consumer Price Index, prescription drug prices increased 4.1 percent between December 2010 and December 2011. Workers' compensation drug cost inflation might be higher than CPI inflation due to different drugs being prescribed, less use of generics and fewer cost controls in the workers' comp system, such as managed care plans, that are found in employer-based and other medical systems.

works can often allay the fears that lead employees to consult attorneys.

- 2 Communicate frequently with any employees workers who are out of work due to work-related injury. Staying involved, rather than turning the claim completely over to your insurer or administrator, can keep the worker connected to the workplace and lessen his/her fears of being lost in a bureaucracy.
- 3 Promote your organization's early return-to-

work philosophy. Employees who fear losing their jobs are more likely to involve an attorney; assuring your employees that they will be returned to work as quickly as possible could lessen their fears of termination and get them back on the job and earning again.

- 4 Train supervisors on the proper handling of a work injury.
- 5 Make sure employees know that, even for fully insured employers, workers' compensation claims affect the company's bottom line. As a component of total compensation costs, excessive comp claims could affect the amount the company can spend on other employee benefits.
- 6 Consider providing short-term disability benefits. This can provide a source of income to disabled employees whose claims might be in dispute. If the claim is found to be work-related, the workers' compensation insurer will reimburse the disability insurer. (Six jurisdictions require employers to provide employees with benefits for short-term disabilities not related to work: California, Hawaii, New Jersey, New York, Rhode Island and Puerto Rico.)

If, despite these steps, your employee lawyers up, you will want to hire a workers' compensation defense attorney as soon as possible. Keep in mind that your insurer might sometimes want to settle a claim when it might not be in the best interest of your organization and its experience rating. We can help guide you through the claims process—for more information, please contact us. ■

## How to Create a “Safety Culture”

**Focusing your safety program solely upon reducing reported accidents and injuries or compliance with OSHA regulations means your safety and loss control program will never be completely successful. You'll be applying all your controls to the tip of the iceberg, while major hazards may lurk unchecked.**

### Why Create a Safety Culture?

Most workplace accidents stem from some type of unsafe behavior: whether it's inattention, improper posture or improper use of safety equipment. Compliance with regulatory requirements alone seldom makes a real dent in your safety record. For example, if you pattern a safety program on OSHA safety and reporting requirements alone, using them as a benchmark to discipline workers who violate them, your safety program will be only tenuously related to safe workplace behaviors and ineffective at reducing accident levels. But creating a “safety culture” that tackles the attitudes, beliefs and values that govern behaviors related to safety—such as what motivates employees to be safe—will lead to an increase in safer behaviors overall.

Creating a corporate safety culture means investing resources, time and personnel into a vigorous occupational health and safety program that wins cooperation at all levels of the company. It looks at employee motivation by asking questions such as: what do workers get from an investment in safety? What needs do unsafe behaviors serve? Do employees feel re-



sponsible for what happens at work? Do they take too many risks—especially in response to management requests for speedier production

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or to make up for being understaffed? Does the company send conflicting signals by rewarding unsafe behaviors when they raise production and punishing them when they cause injury?

### Persuasion vs. Punishment

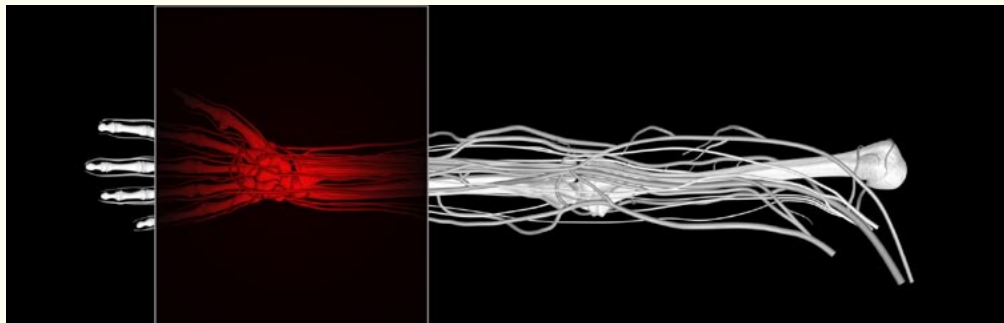
Experts say that worker involvement in safety is proportional to the degree of management understanding, involvement and communication. In fact, worker involvement is as critical to your work safety program as it is to the production process itself. Without a genuine interest in working safely, safety manuals, training sessions and videos will have very little effect on employee work methods. Management lip service to safety via slogans, posters and dry safety meetings that don't generate actual improvements in working conditions conveys a lack of understanding and commitment to safety.

But simply punishing unsafe behaviors won't work either, because the punishments may backfire, leading workers to continue the unsafe behavior while working harder to hide it from supervisors. Punishment can also give rise to frustration and aggression, leading employees who've been punished to reduce output, do substandard work, become careless with products and materials or initiate conflicts with coworkers and supervisors. Increasing rewards and positive reinforcement for safe behavior can help your safety program achieve the results you want.

In our next issue, we'll discuss ways to encourage safe behavior through incentive programs. If you would like more information in the meantime, please call our office. ■

## Using Ergonomics to Control Musculoskeletal Disorders (MSDs)

Whether you call them musculoskeletal disorders (MSDs), repetitive strain injuries or cumulative trauma disorders, they add up to a painful condition for affected workers...and a costly problem for employers.



**T**he U.S. Department of Labor defines a musculoskeletal disorder (MSD) as an injury or disorder of the muscles, nerves, tendons, joints, cartilage and spinal discs. MSDs do not include disorders caused by slips, trips, falls, motor vehicle accidents, or similar accidents. They accounted for 29 percent of all workplace injuries and illnesses requiring time away from work in 2010, the latest year for which data were available at time of publication, an increase of 4 percent from 2009. MSDs affected 34 full-time workers out of 10,000.

Workers in certain industries are more likely to experience an MSD. The services industry reported the most musculoskeletal disorders, ac-

counting for 29 percent of all cases of this type, while the manufacturing industry reported 21 percent of all MSD cases. By occupation, nursing aides, orderlies and attendants have the highest incidence of musculoskeletal disorders, at 249 cases per 10,000 full-time workers.

### Ergonomics: Changes in Design and Thinking

MSDs result when there is a mismatch between the physical requirements of a job and the physical capacity of the human body. Rather than forcing the body to adapt to a job, the science of ergonomics adjusts the job to fit the body's needs by altering the ways tasks are done

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and eliminating aggravating activities.

Taking the following steps will help you improve ergonomics at your worksite:

- 1 Learn about body mechanics and the interrelationship of body and work environment in job performance. How can the physical environment be altered to make work safer and more productive?
- 2 Position equipment properly for the user and train workers on its safe use. Tailor chairs, desks and other office equipment to individual users as much as possible in terms of height, length, distance and size adjustments. Also be aware of how individuals' medical conditions could influence how they operate within the workstation. Emphasize posture and body placement.
- 3 Instruct employees to take rests at given intervals and show them stress-relieving stretches and exercises for bodies, wrists and eyes.
- 4 Evaluate tools and equipment: What are their intended uses? What is their expected volume of use? How much strength/force do they require? What positions do employees use when working with the equipment? How much repetitive motion on the operator's part does the equipment require? Are employees using them correctly? Can you reconfigure existing equipment to make it more ergonomically correct, or do you need new equipment? A one-size-fits-all approach to workstation re-design won't help—instead, focus on devising ways to make the workstation conform to the individual.
- 5 Provide ergonomics education. Train employees in the proper use and placement of workplace equipment. It is important that workers think ergonomically. Training exercises and video presentations can increase employee awareness about how to carry out job tasks most safely.

For more information on eliminating or mitigating ergonomic problems, please contact us. ■

## Avoiding Liability for On-Site Weight or Exercise Rooms

An onsite weight or exercise room can improve employee wellness by making it inexpensive and convenient for employees to exercise. However, employers considering starting a fitness center might have concerns about their liability. To avoid this problem, we suggest the following guidelines for employer-sponsored onsite facilities:



- ✓ Limit use to employees only—no guests or family members
- ✓ Have employees sign a waiver, saying 1) that they have no medical conditions that prohibit or would worsen with exercise, 2) that they agree that use of the center is completely voluntary and occurs on the employee's own time.
- ✓ Specifically state in the waiver that any injuries that occur at the center are not compensable by workers' compensation.
- ✓ Post signs on the doors reiterating the previous point.
- ✓ Prohibit use of the facility for rehabilitation.
- ✓ Read equipment manufacturers' recommendations for preventive maintenance and develop a schedule for inspections and maintenance. Document all inspections and repairs made.
- ✓ If the facility is large enough and the number of prospective users high enough, consider outsourcing its management. Have your attorney review your contract with the facility manager. ■

## Heat Stroke: Learn the Warning Signs

The risk of heat-related illnesses and deaths increases during warm summer months; humidity increases the risk. Heat stroke is the most serious heat-related illness. It occurs when the body becomes unable to control its temperature: body temperature rises rapidly, the sweating mechanism fails, and the body is unable to cool down. Body temperature may rise to 106°F or higher within 10 to 15 minutes. Heat stroke can cause death or permanent disability if emergency treatment is not provided.

Warning signs of heat stroke vary but may include:

- \* Extremely high body temperature (above 103°F)
- \* Red, hot, and dry skin (no sweating)
- \* Rapid, strong pulse
- \* Throbbing headache
- \* Dizziness
- \* Nausea
- \* Confusion
- \* Unconsciousness

If you see any of these signs, you may be dealing with a life-threatening emergency. Have someone call for immediate medical assistance while you begin cooling the victim. Do the following:

- \* Get the victim to a shady area.
- \* Cool the victim rapidly, however you can. For example, immerse the victim in a tub of cool water; place the person in a cool shower; spray the victim with cool water from a garden hose; sponge the person with cool water; or if the humidity is low, wrap the victim in a cool, wet sheet and fan him or her vigorously.
- \* Monitor body temperature and continue cooling efforts until the body temperature drops to 101-102°F.
- \* If emergency medical personnel are delayed, call the hospital emergency room for further instructions.
- \* Do not give the victim alcohol to drink.
- \* Get medical assistance as soon as possible.

Heat exhaustion is a milder form of heat-related illness that can develop after several days of exposure to high temperatures and inadequate or unbalanced replacement of fluids. Its warning signs include

- \* Heavy sweating
- \* Paleness
- \* Muscle cramps
- \* Tiredness
- \* Weakness
- \* Dizziness
- \* Headache
- \* Nausea or vomiting
- \* Fainting
- \* Fast and weak pulse
- \* Fast and shallow breathing

If heat exhaustion is untreated, it may progress to heat stroke. Seek medical attention if symptoms worsen or last longer than one hour. ■

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